

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BENJAMIN VILLANUEVA III

v.
LYCOMING COUNTY PRISON
OWNERS, et al.,

Plaintiff
Defendants

:
3:13-CV-64
(JUDGE MARIANI)

FILED
SCRANTON

FEB 13 2013

PER JU
DEPUTY CLERK

ORDER

AND NOW, THIS 13TH DAY OF FEBRUARY, 2013, upon review of Magistrate Judge Carlson's Report and Recommendation (Doc. 6) for clear error or manifest injustice,

IT IS HEREBY ORDERED THAT:

1. The Report & Recommendation (Doc. 6) is **ADOPTED**.
2. Plaintiff's Motion for Leave to Proceed *in Forma Pauperis* (Doc. 2) is **GRANTED**.
3. The Complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE** with Plaintiff granted **LEAVE TO AMEND** his Complaint consistent with Judge Carlson's Report and Recommendation (Doc. 6). Plaintiff shall file an Amended Complaint **ON OR BEFORE MARCH 6, 2013**.
 - a. To the extent possible, Plaintiff shall allege facts occurring within the statute of limitations to show a continuing violations theory; that is, events occurring after January 10, 2011 that are related to a continuing pattern of assaults or other constitutional violations against him.

- b. Supervisory defendants, Warden DeParlos and Deputy Warden Shoemaker, are **DISMISSED WITHOUT PREJUDICE** with Plaintiff granted **LEAVE TO AMEND** his Complaint to allege facts showing that the supervisory defendants were personally involved in the unconstitutional actions taken against him.
- c. To the extent that Plaintiff is suing a person when he names Lycoming County Prison Owner/Owners as a defendant, the defendant is **DISMISSED WITHOUT PREJUDICE** with Plaintiff granted **LEAVE TO AMEND** his Complaint to allege facts showing that s/he was personally involved in the unconstitutional actions taken against him. To the extent that Plaintiff is suing an institutional defendant, Lycoming County Prison Owner/Owners, is **DISMISSED WITH PREJUDICE** because the prison itself is not a person.

4. The case is remanded to Judge Carlson for further pre-trial proceedings.



Robert D. Mariani
United States District Judge